

This letter discusses sales of partial shares of aircraft and leases of aircraft. See 86 Ill. Adm. Code 130.220. (This is a GIL.)

April 12, 2004

Dear Xxxxx:

This letter is in response to your letter dated July 30, 2003, in which you request information. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

AAA purchases aircraft for the sale or use of our customers. If we sell a share, our customer can purchase a share of the aircraft and the FAA will title that share of the aircraft to the customer. If we sell just the use of the same aircraft, our customer can purchase just time to use the aircraft for 4 years in which case the title stays with AAA.

We currently pay no sales tax when we purchase planes for the sale or use of our customers.

When we purchase an aircraft, we do not know if our future customers will buy shares or time. For example, one aircraft could have four owners each with a 12.5% share for a total of 50% of the aircraft. In addition, the same aircraft could have four customers with contracts to use the same plane for 75 hours a year for 4 years for a total of 1200 hours. We will not sell any more shares of the plane in this example. AAA will retain title to the other 50% of the plane.

We currently charge sales tax on the sale of a share or on the sale of time on Form ST-1. Do you prefer that we charge tax on the sale of a share on form ST-556? Do you prefer we charge tax on the sale of a block of time for 4 years on ST-556? PERSON of the Illinois Department of Revenue discussed our unique situation yesterday with me.

He suggested that we needed a letter from your to determine the proper form and timing of our sales tax remittances.

If you have any questions or need clarification, please call me.

DEPARTMENT'S RESPONSE:

The Department is aware that the rights to use aircraft have been marketed through two distinctly different methods.

Leases of Aircraft

The first method is the sale of the right to use an aircraft for a certain number of hours for a specific duration. We consider this a lease of the aircraft since title to the aircraft is not being transferred. An example of this method is described in your letter as a contract to use the aircraft for 75 hours a year for 4 years for a total of 1200 hours. If no title to the aircraft is transferred pursuant to this contract, this contract is treated as a lease for purposes of Retailers' Occupation Tax and Use Tax liability in this State.

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

Under Illinois law, lessors may not "pass through" their tax obligation to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

Sales of Ownership Interests in Aircraft

The second method is the sale of an undivided ownership share in an aircraft. This method is represented by the example in your letter when four persons each purchase a 12.5% share in an aircraft for a total of 50% of the ownership of that aircraft. The transfer of the partial ownership interest in the aircraft in exchange for valuable consideration is considered a sale at retail subject to Retailers' Occupation Tax and Use Tax liability. Tax is incurred on the gross receipts from the sale of the partial ownership interest. This amount is to be reported on Form ST-556.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk